

Standardise compensation payment in the mining sector

ONE of the difficult issues confronting the mining sector has to do with the payment of compensation for land acquired for mining activities. Presently, there are no standard compensation processes for crops, property and land in mining areas.

According to Section 74(2) of the Minerals and Mining Act 2006, Act 703, in the case of compulsory acquisition of property, **prompt** payment of **fair** and **adequate** compensation shall be made.

The difficulty in agreeing on what constitutes “prompt payment of fair and adequate compensation”, thus, serves as a source of conflict and controversy between mining firms and landowners.

In some cases, the determination of what represents **fair**, **adequate** and **prompt** compensation packages becomes a thorny issue, as there presently appears to be no clear-cut determinants.

Indeed, the Minerals and Mining Act 2006, Act 703, which is presently awaiting guidelines fails to provide an effective and incontrovertible way out. Under the law, with particular reference to Section 73(3) of Act 703: “The amount of compensation payable under subsection (1) shall be determined by agreement between the parties but if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred by either party to the Minister...” Suffice it to say, the ‘**agreement**’ factor without clear acceptable national standards as benchmarks becomes the brewing pot for controversies between the parties involved. Landowners and holders of mineral rights thus determine the compensation to be paid, giving rise to compensation variations.

A direct effect of this vacuum is the perception that mining companies exploit their host communities by not paying appropriate compensation for disturbing their crops and structures.

Whilst beneficiaries generally complain about the inadequacy of these compensation packages, some members of the communities engage in speculative activities in order to secure compensation. The speculative activities include planting of crops and trees ‘overnight’ as well as erecting structures on parts of the mining areas of mining concessions for compensation purposes.

Without holding brief for any mining firm, it must be noted that, over the years, mining companies have paid mutually agreed compensation for crops and structures. The contention had always been over the adequacy or otherwise of the compensation paid.

In order to address this challenge, the Ghana Chamber of Mines with support from the Business Sector Advocacy Challenge Fund (BUSAC) embarked on a study in September 2008 to provide guidelines for clear compensation mechanisms to reduce litigation and ensure that project affected communities are not made worse off as a result of mining operations. The findings of the study are very revealing to the extent that it tells a lot about the relationship between mining firms and their communities as well as the attitude of compensation claimants towards their compensations.

It is interesting to note that, of the 143 respondents (compensation recipients) from 28 mining communities sampled, the study found out that about 64 per cent of compensation recipients admitted that they did not use their monies profitably; 30 per cent however thought they used their monies well whereas 4 per cent could not tell. Approximately 84 per cent of respondents who had been compensated believed that the compensation packages they had received were of less value than the losses they incurred as a result of land, structure, immovable asset and/or livelihood or incomes; the remaining 16 per cent believed that the compensation packages received was of same value to the loss they had incurred.

While Act 703 makes it mandatory for mining companies to pay compensation for any property that is damaged by its exploration and mining activities, the exact quantum of compensation to be paid is not stipulated.

Under the present legal regime, the Land Valuation Board determines minimum rates, but the determination of actual compensation payable is the subject of negotiation between the parties involved and in some cases that is not devoid of litigation.

Presently, for households and/or individuals who are displaced as a result of mining concerns, negotiated compensation is based on 'entitlement'.

Entitlement is considered to be resettlement plans including financial compensation for crops, financial compensation for buildings and other

infrastructure, the right to participate in livelihood restoration programmes, housing, house sites and service provision, temporary housing allowance and other short term provisions required to move from one site to the other.

Apart from the challenge posed by the ‘agreement’ factor of Section 73 (1), (2) and (3) of the Minerals and Mining Act, 2006, is the issue of compensation having been reduced primarily to only cash payments. There ought to be due consideration to the fact that, majority of compensation recipients are thorough-bred farmers or ‘tillers of the ground’ who must always stay connected to land. Land is an emotive issue and recognizing it as such within the general socio-cultural settings of our Ghanaian environment should cause policy makers and implementers to re-think their decisions when it comes to compensations for land in the mining sector.

It is instructive to note that over 34 per cent of respondents in the aforementioned study proposed that compensation should not only be cash but should include alternative land to keep the farmers connected to land.

There is the recognition that a lot more needs to be done in the area of the payment of compensation for acquired lands for mining concerns in order to meet the expectations of both parties. That no doubt will foster a good relationship between mining companies and their host communities.

The Ghana Chamber of Mines and BUSAC Fund study therefore sort to identify inputs for a national policy that would set out clearly, the principles, basis and standards of compensation for mining concessions and property values.

It was also aimed at detailing negotiation procedure and dispute resolution mechanism and recommending a policy on speculative developers on mining concessions.

One of the strong recommendations from the study which involved interviews with key stakeholders and opinion leaders was the need to ensure equity through the ‘dollarisation’ of compensation as a guarantee against inflation and delay effects.

Another key recommendation that emerged from three nation-wide sensitization workshops after the completion of the study was the need to ensure that project-affected persons were well informed about investment opportunities through financial management programmes.

The study notes that mining companies should as far as practicable continue to offer employment opportunities to project-affected persons and their relatives, provide employable skills for the youth, grant scholarships to wards of project-affected persons and pay monthly allowance to vulnerable groups.

These recommendations among others are expected to help give clarity to a national compensation policy; spell out procedures for resolving controversies and deal with issues of speculative developers on mining concessions.

That would understandably translate in a reduction in the number of disputes, tension and potential conflict with respect to the payment of compensation.

Additionally, it is expected to help increase Foreign Direct Investment into the mining sector and reduce the number of speculative development for the sake of compensation payment.

Another critical benefit of such a standardised process in the compensation payment regime is an expected overall growth in GDP in the sector from the current 5 per cent to about 8 per cent in five years.

To have a fair compensation regime devoid of controversies and which would boost the local and national economy therefore, we must have; one, an all-inclusive standby compensation negotiation committee whose decisions would be generally accepted; two, a compensation package that makes provision for alternative land if claimants prefer so; and three, clear and acceptable standards for negotiation.

If these recommendations are catered for in the guidelines for Act 703, it will help eliminate the rancour and associated with compensation in the mining sector and help position mining as a catalyst for local and national development.